3677.

SUPREME COURT OF THE UNITED STATES.

No. 112.

CHARLES DAVENPORT AND AL., HEIRS OF JOHN DAVENPORT, PLAINTIFFS IN ERROR,

VS.

F. FLETCHER AND AL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF LOUISIANA.

INDEX.

	Original.	Print.
Plaintiffs' petition	1 to 4	1
Exceptions and answer of John Davenport	5 to 6	4
Order of continuance	7	5
Agreement	7 to 8	5
Trial on exceptions	8	6
Submission on exceptions	9	7
Judgment overruling exceptions	9	7
Order granting leave to amend the answer, &c.	9	7
Agreement	10	8
Rule to show cause why certain depositions should not be read	11	8
Order making the above rule absolute	11	8
Supplemental petition	12 to 14	9
Citation and marshal's return	15	11
Pleas and exception to supplemental petition	16 to 17	12
Order of continuance of trial on exceptions	18	13
Exceptions taken under advisement	18	13
Judgment on exceptions	18	14
Judgment by default	19	14
Order setting aside default	19	14
Bill of exceptions	20	15
Answer to amended and supplemental petition	21	15
Two orders of continuance	22	16
Jury empanneled and cause opened for trial	22	16
Order permitting def't to withdraw a certain part of the answer	23	17
Further progress in the trial and continuance	23	17

Gideon, printer.

	Original.	Print.
Order ruling out a certain document "as inadmissible in evidence"	24	18
Three entries on the minutes—argument proceeded with and concluded	24	18
Jury received charge from the court and retired	25	19
Jury unable to agree, and a "mis-trial" entered of record	25	19
Order assigning cause for trial	25	19
Order appointing Samuel Perin (to survey the lands in controversy)	25	19
Rule by plaintiffs on defendant to show cause why the case should not be proceeded with in the name of Ambrose Carpenter as plaintiff	26	20
Two orders of continuance of the above rule	26	20
Argument on rule proceeded with, and two orders of continuance	27	21
Order of continuance	27	21
Exception of alienage	28	21
Plea of alienage sustained	29	22
The death of defendant suggested, and order reviving the suit vs. his heirs and representatives	29	22
Answer of the heirs of Davenport	30	23
Cause called for trial, exception of alienage made and submitted	31	24
Order overruling the objection of alienage to all except one of the plaintiffs	31	24
Two orders of continuance	32	24
Jury empanneled, cause opened and continued	32	25
Cause submitted to the jury, and a sealed verdict returned	33	25
Order directing verdict to be opened, read, and recorded, and verdict	33	26
Rule for a new trial, and grounds	34	26
Order granting a new trial	34	26
Order allowing F. Perin, Esq., to withdraw a certain "notarial act"	35	27
Order of continuance and trial by jury waived	35	27
Submission of the cause on the merits	35	27
Final decree	36, 37	28
Writ of possession	38	29
Marshal's return on do	39	30
Petition for writ of error	40	30
Order granting writ of error	41	31
Certificates of authentication	42	32
Writ of error and citations in error annexed.		

CIRCUIT COURT OF THE UNITED STATES,
Fifth Judicial Circuit, Eastern District of Louisiana.

A transcript of the record and procedings in the case of F. Fletcher et als. vs. *John Davenport, No.* 1320 *of the docket of said court.*

Be it remembered that heretofore, to wit, on the 25th day of March, A. D. eighteen hundred and forty-five, came into the clerk's office of said court, Felicite Fletcher, otherwise called Felicite Fletcher Hipp, and others, plaintiffs in the aforesaid suit, by their attorney, F. Perin, esq., and filed in said clerk's office their petition in the words and figures following, to wit:

"To the honorable the judges of the United States circuit court, for the fifth circuit in and for the district of Louisiana:"

The petition of Felicite Fletcher, otherwise called Felicite Fletcher Hipp, Maria Antonia Fletcher, otherwise called Maria Antonia Fletcher Hipp, Augustin Cuesta, Javesra Cuesta, and Felicite Cuesta Y. Fletcher, now the wife of José Desedrio Herroro, herein authorized and assisted by her said husband, all of lawful age and unmarried, except the said Felicite Herraro, the three latter the forced heirs of Adelaide Fletcher Cuesta, deceased, aliens, citizens of the republic of Mexico, and all residing in the city of Vera Cruz, Mexico, except the said Maria Antonia, who resides in Madrid, in the kingdom of Spain, and the said Felicite Herrara, who resides in the city of Xalisco, Mexico, respectfully represents: That in the month of July, 1834, by a verdict and judgment rendered in and by the district court of the State of Louisiana, holding sessions at Baton Rouge, in the case of A. Fletcher et als. vs. executors of A. Cavelier et als., and affirmed by the supreme court for said State, on the 16th day of August, 1834, the said Felicite Fletcher, Maria Antonia, and Adelaide, deceased, were decreed and declared to be the owners of the following described immovable property, to wit, three undivided fourth parts of all that tract, parcel of land, or plantation, situated in the parish of East Baton Rouge, in the State of Louisiana, on the east bank of the Mississippi river, and bounded, in the year 1836, as follows: on the upper line by lands belonging to Josiah Barker, and on the lower line by land belonging, in said year 1836, to the late James Nelson, containing twenty arpents, more or less, front on said river, and eighty arpents, more or less, in depth; together with three undivided fourths of all the tenements and hereditaments thereunto belonging; also three-fourths of all the rents, issues and profits, income and revenues, arising or accruing from the said immovable estate, lands, tenements, &c., from the 7th day of July, 1827, up to the 27th day of July, 1834, amounting to $3,600. It was further ordered and decreed therein, that said Felicite Fletcher, Maria Antonia, and

Adelaide, deceased, were entitled to the possession and enjoyment of all of said property as above described, upon condition that they should pay to the defendants in said suit, within sixty days from the rendition of said judgment, the sum of $22,500, value of defendants' improvements on said premises, less the said sum of $3,600; and it was further decreed between the parties to the said suit, that in case the plaintiffs therein should pay for said improvements and take possession immediately, they should pay defendants the further sum of $4,600, the expenses of raising the standing crop for the year 1834, up to 27th of July of said year, all of which will more fully appear by reference to the reports of the decisions of the said case in the 4th and 10th volumes of the Louisiana Reports, and to the evidence to be produced on the trial of this cause.

Your petitioners further state, that the said Felicite Fletcher, Maria Antonia, and Adelaide, were the plaintiffs in said suit, and that Antoine Cavelier, senior, Antoine Cavelier, junior, and John Davenport, were the defendants therein. Your petitioners further represent, that being unable to procure so large an amount of money, they were compelled to wait the lapse of sixty days, and either take the surplus of the proceeds of sale of the said premises, should defendants proceed to execution, or to wait till defendants proceed to execution, or to wait till defendants had received the whole amount of their debt out of the rents, profits, issues, and revenues of the same. That defendants did not sue out execution in the lifetime of their agent and attorney, Cuvillier, Esq., and that said agent died in 1835.

Your petitioners further represent that execution was not sued out in said case until the 11th day of February, 1836; and that from the 27th day of July, 1834, until the 11th day of February, 1836, defendants received, realized, and enjoyed, from the rents, issues, profits, and revenues of the said premises belonging to petitioners, the sum of $16,000, in part payment of the amount secured to be paid to defendants for their improvements, and that if plaintiffs were at all indebted to said defendants on said 11th day of February, 1836, they were only so indebted in the sum of $2,900.

Your petitioners further state that said defendants, well knowing the facts aforesaid, erroneously, fraudulently, and illegally sued out an execution in said suit, on the 11th day of February, 1836, upon a judgment which had been satisfied in whole or in part, without crediting the owners of said premises with the payment of said $16,000, or any part thereof; without making any inquiry whether they had an agent in the State to represent said absentees in said matters; without causing a curator *ad hoc* to be appointed, and without giving any notice to your petitioners, or any of them, as plaintiffs in said suit, or to their legally authorized agents, attorneys, or curators *ad hoc*, and neglecting to make the advertisements, as required by law, caused the said property, as herein above described, to be sold on the

22d day of March, 1836, for a sum considerably less than one-half of the only legally appraised value ever placed upon said premises, to wit, for the sum of sixteen thousand dollars in cash. That by the verdict of the jury in said suit, that portion of the lands, tenements, &c., belonging to said plaintiffs, was estimated at the sum of $37,000 dollars.

Your petitioners further state that the said John Davenport became the purchaser of the said premises, and that the said sale thereof was and is irregular, illegal, fraudulent, and utterly void, and vested no right, title, or interest in or to the premises aforesaid in said defendant Davenport.

Your petitioners further state, that at the time of the issuing of the said execution, and the sale of the said premises, they were all non-residents of the State of Louisiana, and absent therefrom, and have been so non-resident and absent since the year 1807. That they were not in any manner represented in said seizure and sale, either through agent, attorney, or curator *ad hoc;* that no demand of payment of the sum alleged to be due by plaintiffs to defendants in said suit was made on your petitioners, through any agent whatever, after said execution issued; that no notice of the seizure of the said premises was made upon petitioners through agent, attorney, or curator *ad hoc;* that no demand was made of them or their agents to appear at a certain time and place, as the law requires, to appoint an appraiser previous to the sale; that no legal appointment of appraisers was made, and the appraisement, if any, was irregular, fraudulent, and void.

Your petitioners further represent that said John Davenport has continued to occupy, use, and possess the said lands, tenements, hereditaments, &c., in bad faith, and in defraud of petitioners' rights, since said 22d day of March, 1836, and to receive large amounts of rents, issues, profits, and revenues, at the net annual average income of eight thousand dollars, which sums belong to your petitioners, the payment of which, together with the delivery of the lands, tenements, hereditaments, &c., your petitioners have often demanded of the said John Davenport, but that he refused and still doth refuse to pay and deliver up the same. Wherefore your petitioners pray that the said John Davenport may be cited to appear and answer the petition, and, after all due proceedings, to be condemned to pay petitioners the said sum of eight thousand dollars for every year since said 22d day of March, 1836, with interest, and that the said sale be set aside, avoided, cancelled, and annulled, and defendant decreed to deliver to them the three-fourth parts of all that land, plantation, tenements, and hereditaments belonging to your petitioners, as set forth and described hereinabove, together with all costs, interest, and damages, and for general relief; and they will ever pray, &c.

F. PERIN, *their Attorney.*

Endorsed: "No. 1320. Filed March 25th, 1845."

For D. N. HENNEN, *Clerk.*

J. Q. A. HOIT, *Dep. Clerk.*

Exceptions and answer of John Davenport.—Filed April 16th, 1845.

F. Fletcher et al.
vs.
John Davenport.

In the United States Circuit Court,
For the Fifth Circuit in and for the District of Louisiana.

The exceptions and answer of John Davenport, defendant in the above entitled suit, residing in the parish of East Baton Rouge, State of Louisiana, respectfully shows:

That respondent, admitting the residence of the plaintiffs to be as set forth in their petition for exception to the jurisdiction of this honorable court, denies that Felicite Fletcher, otherwise called Felicite Fletcher Hipp, and Maria Antonio Fletcher, otherwise called Maria Antonio Fletcher Hipp, are aliens within the purview of the law establishing and prescribing the jurisdiction of this honorable court, and that therefore respondent is not bound to answer herein their petition. Respondent avers that said plaintiffs, Felicite Fletcher and Maria Antonia Fletcher were born in the State of Louisiana, and were removed thence by their tutrix during their minority. Therefore respondent prays that their petition be dismissed, and that he recover costs. Should this exception be overruled, respondent, answering, denies each and every of the allegations in said petition contained, and will require strict proof on trial. Respondent specially denies all and singular the allegations of fraud contained in said petition: and further answering, avers, that he holds possession of the property described in plaintiff's petition in virtue of a just, valid, and legal title. But, should the sale of said property to your respondent be decreed invalid, then respondent prays that the plaintiffs herein be condemned to pay him the sum of twenty thousand five hundred dollars, with legal interest thereon from the twenty-sixth day of September, 1834, being the amount of the verdict and judgment rendered in his favor in July, 1834, in the case of Fletcher et al. vs. Cavelier et al., in the third judicial district court of the State of Louisiana. (Your respondent further avers, that since the purchase of said property, he has, at great expense, erected thereon a valuable sugar-house, which, with the appurtenances thereunto belonging, is fully worth the sum of ten thousand dollars; and for this sum respondent prays judgment. Since said purchase, your respondent has also cleared and brought under cultivation two hundred acres of wild woodland; and respondent avers that the great labor and expense of such work, and the consequent increased value of the land, is well worth the sum of fifty dollars per acre. And this amount respondent prays he may recover.) And your respondent further prays, that no writ of possession may issue against him until the three several sums above named, with the interest claimed, have been fully paid and satis-

fied. Respondent further excepting, says, that the sale in virtue of which he holds possession of the property in plaintiff's petition described, cannot now be attacked or inquired into on account of any informality, if any such there was; and that plaintiffs are forever barred from so doing by lapse of time; respondents pleads prescription of five years, established by an act of the Legislature [of Louisiana*] of 10th March, 1834, entitled "An act relative to advertisements." And respondent further pleading in bar of this action, says, that he has complied with the requisitions of the act of the Legislature of Louisiana, of the 10th March, 1834, entitled "An act for the further assurance of titles to purchasers at judicial sales;" and that the judgment of the court confirming and homologating said sale, has the force res judicata, and is a complete bar against all persons whomsoever. Respondent prays for all such further and general relief as the nature of the case may require, and that he bena dismissed with costs of suit.

THOMAS GIBBES MORGAN,
Att'y for def't.

Thomas Gibbes Morgan, attorney of John Davenport, defendant herein, being duly sworn, says, that to the best of his knowledge and belief, Felicite Fletcher and Maria Antonia Fletcher, two of the plaintiffs in the above entitled suit, were born in the State of Louisiana.

THOMAS GIBBES MORGAN.

Sworn to and subscribed before me this 16th day of April, 1845, A. D.
DUNCAN N. HENNEN, *Clerk.*

And afterwards, to wit, on the 25th day of April, A. D. 1845, an order of continuance was entered of record in the minutes in the words and figures following, to wit:

F. FLETCHER AND ALS. vs. JOHN DAVENPORT. } No. 1320.

It is ordered that the exception filed herein, and set for hearing this day, be continued until to-morrow.

Agreement filed April 23d, 1845.

UNITED STATES CIRCUIT COURT,
For the Fifth Judicial Circuit, and for the District of Louisiana.

F. FLETCHER ET ALS. vs. JOHN DAVENPORT. }

It is admitted by the parties in this case that James Fletcher, the

---

* Interlineation approved.

J. W. GURLEY, *Clerk.*
By W. CORNELIUS, *Deputy Clerk.*

father of two of the plaintiffs, to wit, Felicite and Maria Antonia, was a native of Ireland. That about the year 1790, he emigrated to New Orleans, Louisiana, where he continued to reside until the year 1802, when he took his final departure from said city; went to Spain, where he died in 1804. That Catharine Hipp, the mother of the two plaintiffs aforesaid, was a native of the city of Philadelphia, in Pennsylvania. That she removed to said city of New Orleans about the year 1796, where she continued to reside until the year 1807, at which time she removed to Vera Cruz with said plaintiffs, intermarried with Coral, and subsequently died, and that she continued to reside in said city of Vera Cruz from 1807 till her death. That the said Felicite Fletcher or Hipp was born 13th March, in Louisiana, in the year 1797; and that the said Maria Antonia, 17th July, in the year 1802, in Louisiana; and that they both were taken by their mother and tutrix to Vera Cruz in the year 1807, where they have continued to reside ever since, or as stated in the petition; and that they have never at any time since 1807 resided in Louisiana. That the plaintiffs were born out of wedlock, and were the illegitimate children of James Fletcher and Catharine Hipp. That the succession of James Fletcher was opened in the city of New Orleans, after the cession of Louisiana to the United States; letters testamentary were issued to Catharine Hipp, mother of plaintiffs, and she was confirmed as natural tutrix of the plaintiffs, Felicite and Maria Antonia, and of Adelayde, the mother of the other plaintiffs. That the plaintiffs, as children and instituted heirs of James Fletcher, claimed and inherited other property in Louisiana than that claimed in the suit of Fletcher's heirs vs. Cavillier et al., and in this suit. That the said Catharine, and the plaintiff Felicite, and Maria Antonia, and Adelayde, the mother of the other plaintiffs, resided permanently in Louisiana, from the time of the birth of plaintiffs until they were taken to Vera Cruz in 1807.

F. PERIN, *for Plaintiffs.*
T. G. MORGAN, *for Defendant.*

The above agreement is only made as a statement of facts for the argument of the exception to the jurisdiction, and not to apply to any other part of the case.

F. PERIN.

And afterwards, to wit, on the 24th day of April, A. D. 1845, the following entry was made in the minutes:

F. FLETCHER AND ALS.
vs.
JOHN DAVENPORT. } No. 1320.

The trial of the exceptions filed herein this day came on for hearing, F. Perin, esq., appearing for the plaintiffs, and T. G. Morgan, esq.,

appearing for the defendant; when, after some progress therein, the cause being submitted on behalf of the plaintiffs, the same was postponed until to-morrow, at 10 o'clock a. m.

And on the 25th April, 1845, the following entry was made in the minutes:

F. FLETCHER AND ALS.
vs.
JOHN DAVENPORT. } No. 1320.

The argument of counsel on the exceptions filed was this day resumed; when, after some progress therein, the same was postponed.

And on the 26th day of April, A. D. 1845, the following entry was made in the minutes:

F. FLETCHER ET ALS.
vs.
JOHN DAVENPORT. } No. 1320.

The argument of counsel was this day resumed and concluded on the exceptions filed herein, when the same being submitted, the court took time to consider.

And on the first of May, A. D. 1845, the following entry was made in the minutes:

Thursday, May the 1st, 1845.

The court met pursuant to adjournment.

Present the honorable John McKinley, presiding judge; the honorable Theo. H. McCaleb, district judge.

FLETCHER'S HEIRS
vs.
DAVENPORT. } No. 1320.

The court this day delivered its opinion orally, in conformity wherewith it is ordered, adjudged, and decreed that the exceptions filed herein be overruled, with costs.

And afterwards, to wit, on the 1st of May, 1845, the following entry was made in the minutes:

FLETCHER'S HEIRS
vs.
DAVENPORT. } No. 1320.

On motion of T. G. Morgan, esq., of counsel for defendant, it is ordered that he have leave to amend his answer by praying for a trial

by jury; and it is further ordered that the cause be tried on its merits on Monday week next, the 12th instant, by consent of parties, without prejudice to the right of either party to move for a continuance.

Agreement filed 30th April, 1845.

UNITED STATES CIRCUIT COURT,
Fifth Circuit, District of Louisiana.

F. FLETCHER ET ALS.
vs.
JOHN DAVENPORT.

It is agreed by the undersigned, of counsel for the parties in this case, that the agreement made by the same, on the 4th of April instant, by which any portions of the record in the case of A. Fletcher et als. vs. Ex'rs of A. Cavelier et others, should be introduced in evidence on the trial of the above entitled cause, shall include any portions of the transcript of said record filed in the supreme court, or any portions of the original proceedings or papers filed in the case in said supreme court, and that the will of Fletcher, and the certificates of birth and baptism, called for by defendants' counsel, may be introduced separate and apart from said record.

T. G. MORGAN, *for Def't.*
F. PERIN, *for Pl'ffs.*

And afterwards, to wit, on the 5th day of May, 1845, the following entry was made in the minutes:

F. FLETCHER AND ALS.
vs.
JOHN DAVENPORT.
No. 1320.

On motion of F. Perin, of counsel for plaintiffs, it is ordered by the court that defendant, through his attorney, T. G. Morgan, show cause, on Saturday next, the 10th instant, at 9 o'clock a. m., why the depositions of James McCalep and John Butler, taken in this case, and transcript of parts of the record in the case of A. Fletcher et als. vs. Executors of Cavelier and als., taken from the district court of the State at Baton Rouge, and from the supreme court of the State at New Orleans, should not be read in evidence in the trial of the above entitled cause.

And on the 10th day of May, 1845, an entry was made in the minutes in the words and figures following, to wit:

F. FLETCHER AND ALS.
vs.
JOHN DAVENPORT.

The rule taken this case on the 5th May instant, by F. Perin,

3/82.

counsel for plaintiff, to show cause why the depositions of James McCalop and John Butler, taken in this case, and transcript of points of record in the case of A. Fletcher and als. vs. Executors of Cavelier et als., taken from the district court of the State at Baton Rouge, and from the supreme court of the State at New Orleans, should not be read in evidence at the trial of this cause, came up this day to be heard, T. G. Morgan, esq., appearing as counsel for defendants, when the court ordered and directed that that the said rule be made absolute, with costs.

Supplemental petition, filed Nov. 6th, 1845.

To the honorable the judges of the United States circuit court, for the fifth circuit, in and for the district of Louisiana:

The supplemental and amended petition of Felicity Fletcher, otherwise called Felecite Fletcher Hipp, and all the other petitioners in the suit of F. Fletcher et als. vs. John Davenport, filed in this honorable court on the 26th day of March, 1845, and known as number on the law docket, respectfully represents: That at the time of filing their original petition in said case, they were erroneously under the impression that the opinion of the supreme court of the State of Louisiana, in the case of Fletcher's heirs vs. Ex'rs of A. Cavelier et als., became an executory decree. On the 16th or 18th of August, 1834, whereas your petitioners have discovered, since the filing of their original petition, that said opinion of the supreme court was not recorded in the records of the third judicial district court for the parish of East Baton Rouge, until the 13th day of January, 1836; and that on the 11th day of February following, the day on which execution was issued, the said final decree of the supreme court was not executory, nor could any writ or process issue under the same, or against your petitioners, at that or any time thereafter; that the said decree of the supreme court affirmed the judgment of the said district court, by which your petitioners were allowed sixty days, from the time the same became final and executory, to pay the claim for improvements; and that defendant did not wait the expiration of this delay, as he was required to do by the said judgment, before he illegally obtained execution, seizure, and sale, as set forth in their original petition. Petitioners further represent, that, by an agreement in writing, of date the 16th of August, 1834, signed by all the counsel engaged in the said cause, and made part of the record therein, it was agreed (among other things) that the said opinion of the supreme court should not become the decree of the decree of the district court until ten days' notice to all the parties, after the recording of the said opinion—as will more fully appear by reference to an authenticated copy of the said agreement, in the transcript from the supreme court,

by jury; and it is further ordered that the cause be tried on its merits on Monday week next, the 12th instant, by consent of parties, without prejudice to the right of either party to move for a continuance.

Agreement filed 30th April, 1845.

UNITED STATES CIRCUIT COURT,
Fifth Circuit, District of Louisiana.

F. FLETCHER ET ALS.
vs.
JOHN DAVENPORT.

It is agreed by the undersigned, of counsel for the parties in this case, that the agreement made by the same, on the 4th of April instant, by which any portions of the record in the case of A. Fletcher et als. vs. Ex'rs of A. Cavelier et others, should be introduced in evidence on the trial of the above entitled cause, shall include any portions of the transcript of said record filed in the supreme court, or any portions of the original proceedings or papers filed in the case in said supreme court, and that the will of Fletcher, and the certificates of birth and baptism, called for by defendants' counsel, may be introduced separate and apart from said record.

T. G. MORGAN, *for Def't.*
F. PERIN, *for Pl'ffs.*

And afterwards, to wit, on the 5th day of May, 1845, the following entry was made in the minutes:

F. FLETCHER AND ALS.
vs.
JOHN DAVENPORT. } No. 1320.

On motion of F. Perin, of counsel for plaintiffs, it is ordered by the court that defendant, through his attorney, T. G. Morgan, show cause, on Saturday next, the 10th instant, at 9 o'clock a. m., why the depositions of James McCalep and John Butler, taken in this case, and transcript of parts of the record in the case of A. Fletcher et als. vs. Executors of Cavelier and als., taken from the district court of the State at Baton Rouge, and from the supreme court of the State at New Orleans, should not be read in evidence in the trial of the above entitled cause.

And on the 10th day of May, 1845, an entry was made in the minutes in the words and figures following, to wit:

F. FLETCHER AND ALS.
vs.
JOHN DAVENPORT.

The rule taken this case on the 5th May instant, by F. Perin,

counsel for plaintiff, to show cause why the depositions of James McCalop and John Butler, taken in this case, and transcript of points of record in the case of A. Fletcher and als. vs. Executors of Cavelier et als., taken from the district court of the State at Baton Rouge, and from the supreme court of the State at New Orleans, should not be read in evidence at the trial of this cause, came up this day to be heard, T. G. Morgan, esq., appearing as counsel for defendants, when the court ordered and directed that that the said rule be made absolute, with costs.

Supplemental petition, filed Nov. 6th, 1845.

To the honorable the judges of the United States circuit court, for the fifth circuit, in and for the district of Louisiana:

The supplemental and amended petition of Felicity Fletcher, otherwise called Felecite Fletcher Hipp, and all the other petitioners in the suit of F. Fletcher et als. vs. John Davenport, filed in this honorable court on the 26th day of March, 1845, and known as number on the law docket, respectfully represents: That at the time of filing their original petition in said case, they were erroneously under the impression that the opinion of the supreme court of the State of Louisiana, in the case of Fletcher's heirs vs. Ex'rs of A. Cavelier et als., became an executory decree. On the 16th or 18th of August, 1834, whereas your petitioners have discovered, since the filing of their original petition, that said opinion of the supreme court was not recorded in the records of the third judicial district court for the parish of East Baton Rouge, until the 13th day of January, 1836; and that on the 11th day of February following, the day on which execution was issued, the said final decree of the supreme court was not executory, nor could any writ or process issue under the same, or against your petitioners, at that or any time thereafter; that the said decree of the supreme court affirmed the judgment of the said district court, by which your petitioners were allowed sixty days, from the time the same became final and executory, to pay the claim for improvements; and that defendant did not wait the expiration of this delay, as he was required to do by the said judgment, before he illegally obtained execution, seizure, and sale, as set forth in their original petition. Petitioners further represent, that, by an agreement in writing, of date the 16th of August, 1834, signed by all the counsel engaged in the said cause, and made part of the record therein, it was agreed (among other things) that the said opinion of the supreme court should not become the decree of the decree of the district court until ten days' notice to all the parties, after the recording of the said opinion—as will more fully appear by reference to an authenticated copy of the said agreement, in the transcript from the supreme court,

and now filed in this case. Your petitioners aver that no such notice was ever given to them, their agents, or attorneys; and that the defendant (well knowing the premises, and knowing that the delays allowed by said judgment and agreement of counsel had not elapsed) did, on the said 11th day of February, 1836, illegally, erroneously, and fraudulently cause execution to issue, and their property to be seized and sold, as set forth and charged in their original petition. Your petitioners further aver, that said defendant took an unconscientious and inequitable advantage of them, in causing their said property to be so seized and sold during their absence, and without their knowledge or consent; wherefore the said sale should be declared fraudulent, null, and void. Your petitioners further represent, that since the last continuances of this cause, they have been informed that certain unjust, illegal, irregular, and *ex parte* proceedings were had against them in the said parish of East Baton Rouge, in which a fraudulent attempt was made by the said John Davenport to draw a judgment of homologation, under the monition law, over the said illegal sale: whereas your petitioners aver, that all such proceedings are a nullity, and cannot bar any right possessed by your petitioners prior thereto; that the monition law referred to in defendant's answer, is unconstitutional and void; that if it be a valid law, the proceedings to obtain the homologation of the said sale were *ex parte* irregular, illegal, fraudulent, and utterly void, and were had in the absence and ignorance of petitioners, for the purpose of depriving them of their said property; that the form or proceedings which purports to be a judgment of homologation, does not possess the legal requisites to give it the force and validity of a judgment; it was rendered and signed by an incompetent judge, and out of term term of the court; that the same was signed by one Jesse R. Jones, who writes, at the end of his signature, that he was at the time of the signing thereof "Judge 8th district, State of Louisiana:" whereas, the property intended to be affected by said illegal judgment, and all the former proceedings in the cause, were in the 3d judicial district, in the parish of East Baton Rouge; and the said judgment is null and void, inasmuch as it purpurts on its face to have been rendered on the 23d of August, 1836, and to have been signed on the 2d of February, 1837: whereas your petitioners aver that there was no court held in said third district and parish of East Baton Rouge on either of those days; that said court, on the 23d August, 1836, and 2d February, 1837, stood adjourned from term to term, together with the said proceedings for monition, and all other causes pending therein, and no legal or judicial proceedings could be had or conducted in the same during the said vacations. And they further aver, that at the time the said judgment purports to have been signed, the said Jesse R. Jones was holding court in the 8th district, and had no power to render up judgments in causes pending in the third. And they further aver, that none of the said proceedings for monition were ever entered on

the minutes of the court, or recorded in the records of the clerk's office, as required by law for all judicial proceedings; that the said judgment is null and void for other frauds and ill practices on the part of the said defendant in procuring the same. Your petitioners further aver, that there is no evidence in the clerk's office, for said parish and district, or elsewhere, that any such proceedings or judgment were ever had or rendered; that should any such exist, they are utterly false, fraudulent, and null, and cannot in any manner affect the rights of your petitioners in the premises. Your petitioners herewith file the annexed extract from the records of the said third district court, and the accompanying certificate of the clerk thereof, for reference.

Wherefore your petitioners pray, that this supplemental and amended petition may be filed, and the said Jno. Davenport cited to appear and answer it, and, after due proceedings, your honors would pronounce the proceedings for monition in said case a nullity, and that the same cannot in any way affect the rights of petitioners. They further pray, as they have heretofore prayed in their original petition, and for general relief, and they will ever pray, &c.

F. PERIN,
Their Attorney.

Endorsed: "Let the supplemental petition be filed."
"THEO. H. McCALEB."
"Filed 6th November, 1845."
For E. RANDOLPH, *Clerk.*
F. N. HARALSON, *D'y Clerk.*

The President of the United States of America, to the marshal of the district of Louisiana, greeting:

F. FLETCHER ET ALS.
vs.
JOHN DAVENPORT. } No. 1320.

You are hereby commanded to summon John Devenport, a citizen of the State of Louisiana, to comply with the demand of Felicite Fletcher et als., aliens, contained in the supplemental petition, of which a copy accompanies this citation, or to deliver your answer to the same, in the office of the clerk of the circuit court of the United States, fifth judicial circuit and eastern district of Louisiana, in the city of New Orleans, in ten days after the service hereof, or judgment will be rendered against you by default; which delay is increased one day for every ten miles the defendant's residence is distant from New Orleans, the place were the court is held; and that you make due return hereof on the third Monday of December, 1845.

Witness, the honorable Roger B. Taney, chief justice of the Supreme [SEAL.] Court of the United States of America, at the city of New Orleans, this sixth day of November, A. D. one thousand eight

hundred and forty five, and of the independence of the United States of America the 70th year.

ED. RANDOLPH, *Clerk.*
F. N. HARALSON, *Dep. Clerk.*

Marshal's return.

Received this 6th day of November, 1845; and on the 8th day of November, 1845, served copies of the within citation, plaintiffs' supplimental and amended petition and documents annexed, on the within named John Davenport, in the manner following, to wit: by handing them to Thomas G Morgan, Esq., his attorney, who accepted service of the same.

Ret'd 8th November, 1845.

W. F. WAGNER,
U. S. Marshal.

Pleas and exceptions to supplemental and amended petition, filed 14*th November*, 1845.

In the circuit court of the United States, fifth judicial circuit and State of Louisiana.

F. FLETCHER ET ALS.
vs.
JOHN DEVENPORT. } 1320.

John Devenport, defendant in the above entitled cause, now comes into the said court, and for exception to the supplemental and amended petition of the plaintiffs, he saith that the said supplemental and amended petition should be dismissed for this, that the same has been filed since issue joined between the parties to this suit, and the same materially changes the demand of the plaintiffs in their original petition contained, because the averments in the said supplemental and amended petition contained, contradict the declarations and averments of the plaintiffs made in the original petition. For further plea and exception, this defendant saith that the said supplemental and amended petition should be dismissed, and this appearer not held to answer thereto, because he respectfully submits and insists that this honorable court hath no jurisdiction in the premises; that it is not competent for this court to inquire into the legality or validity of a judgment, order, or decree rendered by a competent judicial tribunal of the State of Louisiana, in pursuance of and under authority of the laws of the said State; and this your appearer prays may be inquired of by this honorable court; and that the said supplemental or amended petition may be hence dismissed at the costs of the plaintiffs. And for further plea and exception, this defendant saith that the said supplemental and amended petition should be dismissed for this, that had there been

3/84.

any error, irregularity, or illegality in the proceedings had in the district court for the third judicial district of the State of Louisiana, as is averred in the said supplemental and amended petition, or any fraud committed by this appearer, or by any other person, or by the judge who rendered the decree of homologation complained of by the plaintiffs, they, the said plaintiffs, could have had full and ample redress therefor by direct action of nullity, instituted by the plaintiffs before the proper and competent tribunal of the State of Louisiana, to wit, the district court of the third judicial district in and for the parish of East Baton Rouge, State of Louisiana; and that said court was and is alone competent to hear, try, and determine such action of nullity, had such action been instituted within the term fixed and prescribed by the laws of Louisiana, in such case made and provided. That a further remedy was open to the plaintiffs had they any just cause of complaint, to wit, an appeal from said decree of homologation to the supreme court of the State of Louisiana, taken within the term allowed and prescribed by the laws of said State; and that not having availed themselves of the rights and privileges accorded them by the laws of Louisiana, they cannot be permitted, at this day, and before this court, to plead any such errors, irregularity, illegality, nullity, or fraud, and this your appearer prays may be inquired of by this honorable court; and that the said supplemental and amended petition may be dismissed at the costs of the plaintiffs.

THOMAS GIBBES MORGAN,
Att'y for Deft.

Endorsed: "Filed November 14th, 1845."
F. N. HARALSON, *D'y Clerk.*

And afterwards, to wit, on the 22d day of November, 1845, an order of continuance was entered in the minutes in the following words and figures:

F. FLETCHER ET AL.
v.
JOHN DAVENPORT.

On motion of F. Perin, counsel for plaintiffs, it is ordered that the trial of the exception in this cause be continued until Thursday the 27th inst.

And on the 4th day of December, 1845, the following entry was made in the minutes:

F. FLETCHER ET AL.
vs.
JOHN DEVENPORT, } 1320.

This case being fixed for trial on the exception filed by defendant

herein, to-day the same was taken up, when, after argument of counsel, said case was taken under advisement on defendant's exception.

And on the 19th December, 1845, the following entry was made in the minutes:

F. FLETCHER ET AL.
vs.
JOHN DEVENPORT.

This cause being set for trial this day, was on motion continued.

And on the 22d day of December, 1845, the following entry was made in the minutes:

F. FLETCHER ET AL.
vs.
JOHN DAVENPORT.

This case having been submitted, at a former day of this court, on the exception filed by defendant to plaintiffs' amended and supplemental petition, and the court having maturely considered the same, doth now order, adjudge, and decree, that as much of said exception as relates to said supplemental petition be sustained, and said supplemental petition be dismissed; and that so much of said exception as relates to the correction of errors or omissions in the original petition be, and the same is hereby, overruled, and said amendment sustained.

And on the 24th day of December, 1845, a judgment by default was rendered in this case, and recorded in the minutes, as follows:

F. FLETCHER ET AL.
vs.
JOHN DEVENPORT. } 1320.

On motion of F. Perin, esq., attorney for plaintiffs, and on showing to the court that the citation issued upon the amended bill filed in this cause has been returned executed upon defendant, and that said defendant has failed to plead or answer to said amended petition, within the time prescribed by the rules of this court, it is ordered that judgment by default be, and the same is hereby, entered up against said defendant on said amended petition.

And on the 5th day of January, 1846, the following entry was made in the minutes:

(*Judgment by default set aside.*)

F. FLETCHER ET AL.
vs.
JOHN DEVENPORT. } 1320.

On motion of John W. Gurley, esq., acting for Thos. G. Morgan,

esq., counsel for def't, and on exhibiting to the court the answer of said defendant to the amended petition of plaintiffs filed herein, it is ordered that the judgment by default taken against said defendant at a former day of this court be, and the same is hereby, set aside, and that said defendant be permitted to file his answer to said amended petition which is now filed.

Bill of exceptions, filed January 5th, 1846.

CIRCUIT COURT OF THE UNITED STATES,
Fifth Circuit, and District of Louisiana.

F. FLETCHER ET AL.
vs.
JOHN DAVENPORT. } No. 1320.

Be it remembered, that heretofore, to wit, on the 22d day of December, in the year 1845, the court aforesaid, in passing upon the exceptions filed by the defendant on the day , in the year 1845, to the amended and supplemental petition of the plaintiffs, filed on the day of , in the same year, did, among other things, order and decree that so much of the said exceptions as went to the amendments in said petition should be overruled, and that defendant should be held to answer thereto. Now the said defendant by his counsel respectfully excepts to said order and decree, and submits that there is error therein, and insists that said amendments are contradictory to the averments in the said original petition in part, and they set up new and distinct cause of action, and could not legally be received and filed after issue joined. Wherefore, he tenders this his bill for the allowance of the honorable court, and the same is accordingly allowed.

THEO. H. McCALEB, *U. S. Judge.*

Answer to amended petition, filed January 5th, 1846.

IN THE CIRCUIT COURT OF THE UNITED STATES,
Fifth Judicial Circuit, and District of Louisiana.

F. FLETCHER ET AL.
vs.
JOHN DAVENPORT. } No. 1320.

John Davenport, defendant in the above entitled cause, now comes into court by his counsel, and answering the amended petition of the plaintiffs, filed on the day of , in the year 1845, or so much thereof as he is bound to answer, under the decision of this court, rendered on the day of , in the year 1845, and herein not in any manner waiving the force and legality and effect of the exceptions by him filed on the day of

, in the year 1845, but still expressly insisting upon the same. He saith that he denies each and every of the allegations in the said amended petition contained, and will require strict proof of each and every one thereof, on the trial of this cause, and prays to be hence dismissed with his costs.

THOMAS GIBBES MORGAN,
Attorney for Def't.

Order of continuance entered of record in the minutes, January 14th, 1853.

F. FLETCHER'S HEIRS
vs.
JOHN DEVENPORT. } 1320.

On motion of F. Perin, esq., attorney for plaintiffs, it is ordered that this case be continued until Friday the 23d inst., at 10 o'clock.

Order of continuance entered of record in the minutes, 23d January, 1846.

FLETCHER'S HEIRS
vs.
JOHN DEVENPORT. } 1320.

By consent of counsel, it is ordered that the trial of this case be continued until Monday next, the 26th instant, and that a new venire be awarded, and said cause tried by preference on said day.

And on the 26th day of January, 1846, the following entry was made in the minutes:

FLETCHER'S HEIRS
vs.
JOHN DEVENPORT. } 1320.

This cause being assigned for trial to-day, came the parties' plaintiffs and defendant into court by their counsel, to wit, F. Perin, esq., for plaintiffs, and Thomas Gibbes Morgan, esq., representing the defendant, when the following jury was empanneled and sworn to try the issue joined between the parties, to wit: R. Yeatman, M. Shaw, G. Montegal, John Coulter, George Pollock, H. Flint, P. Wagner, P. A. Aubert, Emilie Duberbrand, Geo. McCauley, and David Israng, to whom said cause to whom said cause was opened on the part of plaintiffs. Whereupon the further argument of said cause was continued until to-morrow morning, 10 o'clock a. m.

And afterwards, on the 26th day of January, 1846, the following entry was made in the minutes:

FLETCHER'S HEIRS
vs. } 1320.
JOHN DEVENPORT.

On motion of Thomas Gibbes Morgan, esq., attorney for defendant, it is ordered, that he be allowed to withdraw that part of defendant's answer herein on the second page, eighth line thereof, commencing with the words, "your respondent further avers," and terminating on same page with the words, "he may recover," which is now withdrawn.

And on the 27th day of January, 1846, the following entry was made in the minutes:

FLETCHER'S HEIRS
vs. } 1320.
JNO. DAVENPORT.

The argument of this cause being resumed this morning, was, on motion, continued until to-morrow morning, at 10 o'clock a. m.

And on the 28th day of January, 1846, the following entry was made in the minutes:

F. FLETCHER'S HEIRS
vs. } 1320.
JNO. DAVENPORT.

The argument of this cause, on the admissibility of the monition offered in evidence by defendant, being resumed this morning, was continued until to-morrow morning, at 10 o'clock a. m.

And on the 29th day of January, 1846, the following entry was made in the minutes:

F. FLETCHER'S HEIRS
vs. } 1320.
JOHN DEVENPORT.

The argument of this cause, on the admissibility of monition offered in evidence by defendant, being resumed this morning, was concluded on the part of plaintiffs by S. S. Prentiss, esq.; whereupon the further trial of this case was continued until to-morrow morning, at 10 o'clock a. m.

And on the 2d day of February, 1846, the following entry was made in the minutes:

F. FLETCHER'S HEIRS
vs.
JOHN DEVENPORT. } 1320.

This case having been submitted to the court, after argument of counsel on the admissibility of the monition offered in evidence by defendant on the trial thereof, and the court having maturely considered the same, doth now order, adjudge, and decree, that said monition is inadmissible as evidence, and is hereby ruled out.

And afterwards, on the 2d day of February, 1846, the following entry was made in the minutes:

F. FLETCHER'S HEIRS
vs.
JOHN DEVENPORT. } 1320.

The argument of this cause being resumed before the court and jury this day, was continued until to-morrow morning, at 10 o'clock a. m.

And on the 3d February, 1846, the following entry was made in the minutes:

F. FLETCHER'S HEIRS
vs.
JOHN DEVENPORT. } 1320.

The argument of this cause being resumed this day before the jury, was continued until to-morrow morning, at 10 o'clock a. m.

And on the 4th of February, 1846, the following entry was made in the minutes:

FLETCHER'S HEIRS
vs.
JNO. DEVENPORT. } No. 1320.

The argument of this cause being resumed this day before the jury, was concluded on the part of defendant by Sergeant S. Prentiss, esq.; whereupon the court discharged said jury until Saturday morning, the 7th instant, to receive their charge.

And on the 7th day of February, A. D. 1846, the following entry was made in the minutes.

FLETCHER'S HEIRS
vs.
JNO. DEVENPORT. } 1320.

The jury, empanneled and sworn to try the issue joined between

the parties, to wit, George Pollock, R. Yeatman, M. Shaw, G. Montegut, John Coulter, H. Flint, P. Wagner, P. A. Aubert, Emilie Dubertrand, Geo. McCauley, and David Israng, having been discharged until this morning, returned into court to receive their charge; and after having been charged by the court, retired to consult upon their verdict.

And afterwards, to wit, on the 7th February, 1846, the following entry was made in the minutes:

F. FLETCHER'S HEIRS
vs.
JOHN DEVENPORT.

The jury, having retired to consult upon their verdict, returned into court and reported that they were unable to agree upon a verdict. Whereupon, the court ordered said jury to be discharged, and a mis-trial entered in this case.

And on the 26th day of February, 1846, the following entry was made in the minutes:

FLETCHER'S HEIRS
vs. } 1320.
JOHN DEVENPORT.

On motion of F. Perin, Esq., attorney for plaintiffs, and with the consent of Thos. Gibbes Morgan, Esq., attorney for defendants, it is ordered that this case be assigned for trial on Thursday next, the 5th of March.

Order entered in the minutes, April 21, 1846.

F. FLETCHER'S HEIRS ET AL.
vs. } 1320.
JOHN DEVENPORT.

On motion of F. Perin, of counsel for plaintiffs, it is ordered by the court, that Samuel Perin, jr., U. S. deputy surveyor for the State of Louisiana, be appointed to ascertain, by survey or measurement, what portion of the plantation sued for in this case has been cleared and is now under cultivation.

And afterwards, to wit, on the 7th day of May, A. D. 1846, the following entry was made in the minutes:

New Orleans, May 7th, 1846.

Court met pursuant to adjournment.

Present, the Hon. Theo. H. McCaleb, district judge.

F. FLETCHER ET AL.
vs.
JOHN DAVENPORT. } 1320.

On motion of F. Perin, Esq., of counsel for Ambrose Carpenter, a citizen of the State of Missouri, and on filing the public act of sale from plaintiffs to said Carpenter, of date 1st of May, 1846, it is ordered by the court, that the said defendant, John Devenport, show cause, if any he can, on Wednesday, the 20th instant, at 10 o'clock a. m., why this cause be not prosecuted in the name, at the risk, and for the use and benefit of the said purchaser, Ambrose Carpenter.

And on the 20th May, 1846, the following entry was made in the minutes:

FLETCHER'S HEIRS
vs.
JOHN DEVENPORT. } 1320.

The rule herein taken by F. Perin, Esq., attorney for plaintiffs, upon defendant, to show cause why this suit should not be prosecuted in the name of Ambrose Carpenter, and why said Ambrose Carpenter should not be substituted as plaintiff in this case, being returnable this day, was opened, and continued until to-morrow morning, the 21st inst., at 10 o'clock a. m.

And on the 21st day of May, 1846, the following entry was made in the minutes:

FLETCHER'S HEIRS
vs.
JOHN DEVENPORT. } 1320.

The trial of the rule herein taken by the plaintiffs, to substitute Ambrose Carpenter as the party plaintiff in this cause, having been continued until this morning, was resumed, argued, and continued until to-morrow morning, at 9 o'clock a. m.

And on the 22d day of May, 1846, the following entry was made in the minutes:

FLETCHER'S HEIRS
vs.
JOHN DEVENPORT. } 1320.

The rule herein taken by the plaintiffs upon defendant to show

cause why Ambrose Carpenter should not be substituted as the plaintiff herein, having been continued after argument, was resumed and argued by S. S. Prentiss, esq., counsel for said plaintiffs, and continued until to-morrow, the 23d instant, at 9 o'clock.

And on the 23d May, 1846, the following entry was made in the minutes:

FLETCHER'S HEIRS
vs.
JOHN DEVENPORT. } No. 1320.

The rule herein taken by the plaintiffs upon the defendant to show cause why Ambrose Carpenter should not be substituted as the party plaintiff herein in lieu of the nominal plaintiffs, having been continued in argument until this morning, was resumed by S. S. Prentiss, esq., for said rule, who closed the argument on the part of said plaintiffs; whereupon the further argument thereof, on the part of the defendant, was continued until Monday, the 25th instant, at 10 o'clock a. m.

And afterwards, to wit, on the 19th day of March, 1847, the following entry was made in the minutes:

F. FLETCHER ET AL.
vs.
JOHN DEVENPORT. } 1320.

The trial of this cause being assigned for this day, appeared this day in open court the respective parties, plaintiffs and defendant, by their counsel; whereupon, by consent of counsel, it is ordered that the trial of this case be, and the same is hereby, continued until Tuesday next, the 23d instant, at 10 o'clock a. m.

Exception of alienage.—Filed March 19th, 1847.

CIRCUIT COURT OF THE UNITED STATES,
For the Fifth Circuit and District of Louisiana.

HEIRS OF FLETCHER
vs.
JOHN DAVENPORT.

And now, on the 19th day of March, 1847, the said defendant comes into court here, and showeth that the plaintiffs aver in their petition that they are citizens of the republic of Mexico; that war is now actually pending between the United States and the republic of Mexico; the said defendant therefore pleads that the plaintiffs are, by their own showing, alien-enemies, and as such they are not competent to be heard by, or sustain any action or suit in, the courts of

the United States. He therefore prays that this suit may be dismissed, or dropped from the trial docket, and ordered to be continued until the restoration of peace between the United States and the republic of Mexico, and that such further or other order may be taken therein as to this court may seem proper and the laws allow.

T. G. MORGAN,
Att'y for def't.

And on the 23d day of March, A. D. 1847, the following entry was made in the minutes:

December term—A. D. 1846.

New Orleans, Tuesday, March 23d, 1847.

Court met pursuant to adjournment.

Present the honorable John McKinley, presiding judge; the honorable Theo. H. McCaleb, associate judge.

FLETCHER'S HEIRS
vs.
JOHN DEVENPORT. } 1320.

The plea herein filed by defendant at a former day of this court, that plaintiffs could not be heard in this court, they being alien-enemies, being assigned for this day, said cause was taken up, and said plea argued by counsel; whereupon it was considered by the court that said plea be, and the same is hereby, sustained, and that this cause be, and the same is hereby, continued until the end of the war, or until plaintiffs be authorized by this court further to prosecute this suit.

And on the 20th December, 1847, the following entry was made in the minutes:

F. FLETCHER AND AL.
vs.
JOHN DEVENPORT. } No. 1320.

On motion of F. Perin, of counsel for plaintiffs, and after the suggestion to the court by T. G. Morgan, esq., of counsel for defendant, of the death of said defendant, it is ordered by the court, that Charles Davenport, administrator, residing in the parish of Iberville, Erasmus A. Ellis, residing in said parish of Iberville, Margaret Davenport, wife of Peter McKitrick, and her husband, residing in the parish of East Baton Rouge, John Phillip Edgar Davenport, minor child of Joseph Davenport, deceased, represented by V. Gourdain, his tutor, residing in the parish of New Orleans, and Elizabeth Davenport, widow of Celesten Maxent, residing in the parish of Jefferson,

all citizens of the State of Louisiana, and residing therein, be inserted in the record as heirs as heirs and representatives of the deceased defendant, and that the said suit be revived and continued against them.

Answer of heirs of Davenport.—Filed 25th January, 1848.

UNITED STATES CIRCUIT COURT,
Fifth Circuit and District of Louisiana.

F. FLETCHER ET AL.
vs.
JOHN DAVENPORT.

And now Charles Devenport, Erasmus A. Ellis, Margaret Devenport, wife of Peter McKitrick, John Philip Edgar Devenport, minor child of Joseph Devenport, dec'd, represented by V. Gourdain, his tutor, and Elizabeth Devenport, widow of Celesten Maxent, deceased, come into this honorable court, and first protesting that by so doing they do not mean or intend to accept the succession of John Devenport, deceased, as heirs pure and simple, but only to accept the same as heirs with the benefit of inventory, as by the laws of the State of Louisiana, of which State they are all citizens, they have a right to do. And the said Charles Devenport, administrator of the estate of the said John Devenport, duly appointed by the honorable the sixth judicial district court in and for the parish of East Baton Rouge and State of Louisiana, of which parish the said John Devenport was a resident at the time of his decease, for answer to the petitions herein presented, they say that they refer to the answers heretofore filed by the said John Devenport, and adopt the same; and for further answer, these respondents say that even if any error or informality exists in the proceedings of the district court for the third judicial district court for the parish of East Baton Rouge and State of Louisiana, in the suit therein pending between these plaintiffs and the said John Devenport and others, which they deny, then they say that the said John Devenport had, and they have, the right in law to the possession of the lands sued for; the plaintiffs never having paid or tendered to the said John Devenport, or to these respondents, the sum of twenty-two thousand five hundred dollars, the amount for which the said John Devenport and others recovered judgment against the plaintiffs; and that, until the same is paid, the plaintiffs had no right of action against the said John Devenport, and have no right of action against these respondents. Wherefore these defendants pray that judgment may be rendered in their favor against the said plaintiffs, that respondents be quieted in their possession of the said lands, and that they recover their costs of suit to be taxed, and for general relief in the premises.

THOMAS GIBBES MORGAN,
Att'y for def'ts.

And on the 24th January, A. D. 1848, the following entry was made in the minutes:

FLETCHER'S HEIRS
vs.
JOHN DAVENPORT. } 1320.

This cause being called for trial, appeared the respective parties by their counsel, when the defendant objected to go to trial, on the ground that the plaintiffs are "alien-enemies," consequently this court cannot proceed in the premises; which was argued and submitted to the court, who took the same under advisement.

And on the 25th day of January, A. D. 1848, the following entry was made in the minutes:

FLETCHER'S HEIRS
vs.
JOHN DAVENPORT. } 1320.

The court having maturely considered the objection made by the def't to proceed to trial in this case, in consequence of the plaintiffs being alien-enemies, heretofore submitted to the court, doth now order and decree that said objection be overruled; and it further appearing to the court that the disability of alien-enemy is removed from all the plaintiffs, by reason of a portion of the residences of said plaintiffs being in the State of Vera Cruz, Mexico, now under the occupation of the forces of the United States, and the other in the kingdom of Spain, except Felicite Cuesta y Fletcher, wife of Desedario Herrarro, who resides in the city of Jalisco, Mexico, a portion of said republic of Mexico which has not been conquered by the United States, it is ordered that this cause now proceed to trial, in the names of all the plaintiffs, except the said Felicite Cuesta, and that as to her, and the interests which she has or claims, it is ordered that the cause be continued from term to term until the disability of alien-enemy shall be removed.

And on the 31st of January, 1848, the following entry was made in the minutes:

FLETCHER'S HEIRS
vs.
JOHN DAVENPORT. } 1320.

By consent of counsel, it is ordered that the trial of this cause be, and the same is hereby, continued until to-morrow, the 1st February, 1848, at 10 o'clock a. m.

And on the 1st of February, 1848, the following entry was made in the minutes:

FLETCHER'S HEIRS
vs. } 1320.
J. DAVENPORT.

By consent of counsel, it is ordered that the trial of this cause be, and the same is hereby, continued until Friday, the 4th instant, at 10 o'clock a. m.

And on the 4th day of February, 1848, the following entry was made in the minutes:

F. FLETCHER AND ALS.
vs. } 1320.
JOHN DAVENPORT.

This cause being assigned for trial to-day, came the parties, plaintiffs and defendant, into court, by their counsel, to wit, F. Perin, esq., for plaintiff, and Thomas G. Morgan, esq., for defendant, when the following jury were empanneled and sworn to try the issue joined between the parties, to wit: John Wiley, M. Riorden, J. Castellano, Victor Benet, A. Delpit, George Steever, Henry Harrison, H. N. Lund, C. Stevenson, Jacob Stein, F. Levasseur, and P. D. Henry; whereupon said case was opened to the jury, and after some progress in the cause, the same was continued until to-morrow, at 10 o'clock a. m., and that the jury be discharged until that hour.

And on the 5th day of February, A. D. 1848, the following entry was made in the minutes:

F. FLETCHER AND AL.
vs. } 1320.
JOHN DAVENPORT.

The trial of this cause being resumed this day before the court and the jury heretofore empanneled and sworn, the evidence and argument of counsel was closed on both sides; whereupon the court appointed J. Castellano the foreman of said jury, who retired to deliberate upon their verdict, under the charge of the court. By consent of counsel, the court granted permission to the jury to return a sealed verdict; when, after some consultation, a verdict was delivered to the clerk of this court, and the jury discharged until Monday next, the 7th instant, at 10 o'clock a. m.

And on the 7th February, 1848, the following entry was made in the minutes:

F. FLETCHER ET ALS.
vs. } 1320.
JOHN DAVENPORT.

This cause having been argued before the court and the jury em-

panneled and sworn to try the issue joined between the parties on the 5th instant, and said jury having delivered to the clerk of this court a sealed verdict in this case on said day, after the adjournment of the court, appeared this day in open court the respective parties, plaintiffs and defendant, by their counsel, and the jury heretofore empanneled and sworn; and thereupon, on motion of plaintiff's counsel, the sealed verdict, rendered by said jury herein on the 5th instant, was ordered to be opened and read; which said verdict read as follows, to wit: "We, the jury, find for the defendant, the plaintiffs not having complied with the decision of the supreme court of the State of Louisiana, affirming the verdict of the court of East Baton Rouge. New Orleans, February 5th, 1848. J. Castellanoes, foreman." Whereupon it was considered by the court that said verdict be, and the same is hereby, recorded.

And afterwards, to wit, on the 7th day of February, 1848, the following entry was made in the minutes:

F. Fletcher et al.
vs.
Heirs of John Davenport. } 1320.

On motion of F. Perin, of counsel for the plaintiffs, it is ordered by the court, Thomas Gibbes Morban, esq., of counsel for the defendants, show cause, on Tuesday, the 8th instant, at 10 o'clock a. m., why a new trial should not be granted in the above entitled cause, on the following grounds, to wit: 1st. That the verdict of the jury is manifestly erroneous, and clearly contrary to law and evidence. 2d. The jury say that they find for the defendant on the ground that the plaintiffs have not complied with the decision of the supreme court. If this has any meaning whatever, it must have reference to the judgment for improvements, which has long since been paid, as shown by the evidence. 3d. The jury are silent as to the validity of the sheriff's sale to Davenport, which is a question independent of this judgment they refer to. 4th. The jury have found a special verdict, by stating on what ground they made up their minds; they have not found and returned all the matters of fact at issue between the parties. 5th. And for other grounds, to be stated in argument. 6th. The jury have wholly disregarded the express instructions of the court.

And on the 8th day of February, 1848, the following entry was made in the minutes:

F. Fletcher and als.
vs.
Heirs of Davenport. } 1320.

The motion herein made by the plaintiffs for a new trial in this

case being returnable this day, said motion was taken up and submitted; whereupon it was considered by the court that said motion be, and the same is hereby, sustained, and that a new trial and *venire facias de novo* be awarded the plaintiff, with costs.

And on the 18th day of February, 1848, the following entry was made in the minutes:

F. FLETCHER AND AL.
vs.
HEIRS OF JOHN DAVENPORT. } 1320.

On motion of F. Perin, of counsel for plaintiffs, it is ordered that he have leave to withdraw the notarial act of sale from plaintiffs to A. Carpenter.

And on the 26th day of April, 1848, the following entry was made in the minutes:

F. FLETCHER AND ALS.
vs.
JOHN DAVENPORT. } 1320.

This cause having been regularly fixed for trial on this day, the parties appeared by their attorneys, Prentiss and Perin for plaintiffs, and T. G. Morgan for the defendants. By consent of said parties, the cause is continued until Wednesday, the 17th day of May next, and that the trial by jury be waived.

And on the 17th day of May, 1848, the following entry was made in the minutes:

FLETCHER'S HEIRS
vs.
JOHN DAVENPORT. } 1320.

The trial of this cause being continued until this day, appeared the respective parties by their counsel, Prentiss and Finney and F. Perin, esq., for the plaintiffs, and T. G. Morgan, esq., for defendant; whereupon said case was taken up, evidence offered, cause argued and submitted, when the court took the same under advisement.

And on the 17th day of June, A. D. 1848, the court rendered a final decree in this case, which was entered of record in the minutes of that date, and said decree was also recorded in the judgment docket and signed, and, as thus entered, recorded, and signed, is in the words and figures following, to wit:

April term, A. D. 1848.

New Orleans, Saturday, June 17, A. D. 1848.

Court met pursuant to adjournment.

Present, the honorable Theo. H. McCaleb, district judge; absent the honorable John McKinley, presiding judge.

FLETCHER'S HEIRS vs. JOHN DAVENPORT. } 1320.

The court having fully considered this case, and the law and evidence being clearly in favor of the plaintiffs, it is now therefore ordered, adjudged, and decreed, that plaintiffs do recover of defendants, to wit: Charles Davenport, Erasmus A. Ellis, Margaret Davenport, wife of Peter McKittrick, John Philip Edgar Davenport, and Elizabeth Davenport, widow of Celestin Maxent, deceased, heirs of John Davenport, the lands claimed by them in their petition, that is to say, three undivided fourth parts of all that tract, parcel of land, or plantation, with the buildings and improvements thereon, situated in the parish of East Baton Rouge, in the State of Louisiana, on the left or east bank of the Mississippi river, and bounded as follows: on the upper line by lands formerly belonging to Josiah Barker, and on the lower side by lands belonging to Johnson & Walker, containing twenty arpents more or less front on the Mississippi river, by eighty arpents more or less in depth, it being the same property which is described on the plat and certificates of survey filed in the cause, and which was received by plaintiffs, as heirs of James Fletcher, in a suit against the executors of A. Cavelier et als., in the district court of the State for the said parish of East Baton Rouge, and it is ordered that plaintiffs be put in possession of the lands, tenements, &c., hereby recovered. And it is further ordered, &c., that plaintiffs recover of the said defendants three-fourths of the value of the rents and profits of the said plantation, at the rate of five dollars per annum for each cleared acre—say three hundred and seventy-four acres, from July 7th, eighteen hundred and thirty-four, up to the first of January, eighteen hundred and thirty-six; and at the rate of ten dollars per annum for each cleared acre, (374,) from the first of January, eighteen hundred and thirty-six, up to the present time, say June 17th, 1848, amounting in all to the sum of thirty-six thousand five hundred and eighty-one dollars and ninety-nine cents, and that the plaintiffs be allowed rents and profits at the rate of ten dollars per annum for the three-fourths of each cleared acre on said plantation, from the present time until possession of the premises hereby recovered shall be delivered to them. The above sum is to be credited in favor of the defendants with the sum of sixteen thousand dollars,

amount credited on the execution against plaintiffs issuing out of the State court; and also with the further sum of two thousand nine hundred dollars balance of judgment for improvements in the said suit in the State court, with interest at the rate of five per cent. per annum on those two sums, from the 7th of July, 1834, up to the present, amounting in all to the sum of thirty-two thousand one hundred and forty-one dollars and thirty-six cents, leaving a balance due plaintiffs, and against the defendants, on the 17th of June present, of four thousand four hundred and forty dollars and sixty-three cents, which will bear legal interest from this date till paid. It is further ordered, &c., that plaintiffs do recover of the said defendants the said sum of four thousand four hundred and forty dollars and sixty-three cents, with interest and costs of suit.

Judgment rendered June 17th, 1848; judgment signed June 23d, 1848.

THEO. H. McCALEB, [L. S.]
U. S. Judge.

Writ of possession, issued 21st July, 1848.

UNITED STATES OF AMERICA:

The President of the United States, to the marshal of the district of Louisiana, greeting:

Whereas Felicite Fletcher, Maria Antonia Fletcher, Augustine Cuesta, Javiera Cuesta, and Felicite Cuesta y Fletcher, complainants, against Charles Devenport, Erasmus A. Ellis, Margaret Devenport, wife of Peter McKittrick, John Phellip Edgar Davenport, and Elizabeth Deavenport, wife of Celestine Maxent, deceased, heirs of John Davenport, deceased, defendants, on the 23d day of June, A D. 1848, by the judgment of the circuit court of the United States, for the fifth circuit and district of Louisiana, received the lands claimed by them in their petition, to wit, three undivided fourth parts of all that tract, parcel of land, or plantation, with the buildings and improvements thereon, situated in the parish of East Baton Rouge, in the State of Louisiana, on the left or east bank of the Mississippi river, and bounded as follows: on the upper line by lands formerly belonging to Josiah Barker, and on the lower side by lands belonging to Johnson & Walker, containing twenty arpents more or less front on the Mississippi river, by eighty arpents more or less in depth, it being the same property which is described in the plat, and certificate of survey filed in the cause, and which was received by the plaintiffs as heirs of James Fletcher, in a suit against the executors of A. Cavallier et al., in the district court of the State for the said parish of East Baton Rouge; "and also, by said judgment, it was ordered and decreed that a writ of possession therefor be issued by the clerk, &c. Now, therefore, you are hereby commanded to proceed to said described lands and premises, and put the said above complainants in possession thereof, having due regard

to the law in such cases made and provided, and to which your attention is directed to the 630, and 632 articles of the code of practice, and that you report herein within seventy days how you have executed this writ: herein fail not, under the penalty of the law, and have then there this writ.

Witness the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this 21st day of July, A. D. 1848, and 73d year of the Independence of the United States.

EDMUND RANDOLPH, *Clerk.*
JAMES M. DOWNS, *D'y Clerk.*

Clerk's costs on this writ and copy, $4, which the marshal will collect of defendants.

J. M. DOWNS, *D. C.*

N. O., July 21, 1848.

Marshal's return, endorsed on the foregoing writ of possession.

Rec'd the 21st July, 1848, and on the 22d of the same month, served a copy of this writ upon the defendant, who surrendered to me possession of the property herein described. Whereupon, I have placed the plaintiffs in possession of said property, as appears by the acknowledgment of their agent and attorney, hereto attached.

Returned 10th August, 1848.

W. F. WAGNER,
U. S. Marshal.

Acknowledgment of rec't of the possession of the property.

East Baton Rouge, July 22d, 1848.

I acknowledge to have received (as agent and attorney for the plaintiff) the plantation, lands, premises, &c., recovered by plaintiff, in the suit of F. Fletcher et al. vs. the heirs of John Devenport, from the United States marshal for the district of Louisiana.

F. PERIN, *for Plaintiff.*

Petition for writ of error, filed 11th April, 1853.

IN THE CIRCUIT COURT OF THE UNITED STATES,
In the Fifth Circuit, and Eastern District of Louisiana.

F. FLETCHER AND AL.
vs.
JOHN DAVENPORT. } No. 1320.

To the honorable the judges of the circuit court of the United States, in and for the fifth circuit, holding sessions in the eastern district of Louisiana:

The petition of Charles Davenport, Erasmus A. Ellis, Margaret

3/93.

Davenport, wife of Peter McKinnick, John Philip Edgar Davenport, minor child of Joseph Davenport, deceased, herein appearing and represented by V. Gourdain, his tutor, and of Elizabeth Davenport, widow of Celestin Maxent, deceased, respectfully represent: That in the above suit lately pending in this honorable court, a final judgment has been rendered against your petitioners for the land set forth and described in the petition in this case, and with which said judgment they are dissatisfied, and are advised and believe that there are errors in the proceedings and said final judgment to the prejudice and injury of your petitioners, and from which they desire to be relieved; and to that end pray that a writ of error may issue herein for the removal of said cause to the Supreme Court of the United States, that the errors complained of may be examined into and corrected. Your petitioners also show, that since said final judgment, the original plaintiffs, in the petition named, have parted with their interest in the said judgment to Charles McMicken, a citizen of the State of Ohio, residing in the city of Cincinnati, and he hath been subrogated to the rights of the plaintiffs in the case, as doth appear by the record in this cause. Your petitioners aver, that the land in controversy in this case is of very great value, to wit, of the value of more than thirty thousand dollars. In consideration of the premises, your petitioners pray that a writ of error may be awarded them herein according to law, to the Supreme Court of the United States, in their giving such bond and security as the law and right may demand, which they are here ready to do: that the original plaintiffs herein, as well also as the said Charles McMicken, may be made parties hereto, and duly cited, admonished, and commanded to appear in said Supreme Court, to answer herein, and that all such other orders may be granted herein as will make effectual the purposes of your petitioners which the law may allow or require.

L. C. & G. B. DUNCAN,
Attorneys for Petitioners.

Order granting writ of error.—Extract from the minutes, April 11th, 1853.

New Orleans, Monday, 11th April, 1853.

Court met pursuant to adjournment.

Present, Hon. Theo. H. McCaleb, district judge.

F. FLETCHER AND ALS. vs. JOHN DAVENPORT. } 1320.

On motion of L. C. and G. B. Duncan, attorneys for the heirs of Davenport, defendants herein, and on presenting and filing the peti-

tion of said defendants, representing that they are aggrieved by the judgment herein rendered, and praying for a writ of error, returnable to the next term of the Supreme Court of the United States, it is ordered that the writ be granted as prayed for, on defendants giving bond, conditioned according to law, in the penal sum of five hundred dollars, with B. O'Connell as surety thereon.

UNITED STATES OF AMERICA,
Circuit Court of the United States,
Fifth Circuit and Eastern District of Louisiana.

Clerk's Office.

I, John W. Gurley, clerk of the circuit court of the United States, for the fifth circuit and eastern district of Louisiana, do hereby certify, that the foregoing 41 pages contain and form a full, complete, true, and perfect transcript of the record and proceedings had in the case of F. Fletcher et als. vs. John Davenport, number 1320 of the docket, so far as the same now remain of record or on file in said court.

[SEAL.] Witness my hand and the seal of said court, at the city of New Orleans, this 10th day of May, A. D. 1853.

J. W. GURLEY, *Clerk.*

I, Theodore H. McCaleb, United States judge for the eastern district of Louisiana, do hereby certify, that John W. Gurley, whose name is signed to the above certificate as clerk of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, was, at the time of signing said certificate, and is now, the clerk of said court: that said certificate is in due form of law, and that full faith and credit are due to his official attestations as such clerk.

Given under my hand and seal, at the city of New Orleans, in said district, this 10th day of May, A. D. 1853.

THEO. H. McCALEB, [SEAL.]
U. S. Judge.

UNITED STATES OF AMERICA, *ss:*

The President of the United States, to the hon. the judges of the circuit court of the United States for the 5th circuit and eastern district of Louisiana, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, or some of you, between F. Fletcher and als. and Charles Davenport and als., heirs of John Davenport, deceased, a manifest error hath happened to the great damage of the said Charles Davenport and als., heirs of John Davenport, deceased, as by their complaint appears; we being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in

this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the first Monday of December next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Hon. Roger B. Taney, Chief Justice of the Supreme Court of the United States, this 12th April, A. D. 1853.

J. W. GURLEY, [L. S.]
Clerk of the Circuit Court of the United States
for the Eastern Dist. of La.

Citation in error.

The United States of America, to Felicite Cuesta y Fletcher, wife of Jose Desadario Herraro, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the 5th circuit and eastern district of Louisiana, wherein Charles Davenport, Erasmus A. Ellis, Margaret Davenport, wife of Peter McKitterick, John Phillip Edgar Davenport, minor child of Joseph Davenport, deceased, appearing and represented by V Gourdan, his tutor, and Elizabeth Davenport, widow of Celestin Maxent, deceased, heirs of John Davenport, are plaintiffs in error, and you and als. are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable Roger B. Taney, chief justice of the Supreme Court of the United States, this thirteenth day of April, in the year of our Lord one thousand eight hundred and fifty-three.

THEO. H. McCALEB, [L. S.]
U. S. Judge,

Marshal's return.

Rec'd April 13, 1853, and on the 20th April, 1853, served copy of the within citation in error on Felicite Cuesta y Fletcher, wife of Jose Desadario Herraro, in the following manner, to wit, by handing the same personally to F. Perin, Esq., attorney of record of said defendant in

error, who accepted service of same for the said Felicite Cuesta y Fletcher, (wife of Jose Desadario Herraro,) she being absent at the time. Ret'd into court, April 20, 1853.

WM. S. SCOTT, *U. S. Marshal.*
By CHA. A. LABREZAN, *D'y Marshal.*

Citation in error.

The United States of America to Augustine Cuesta, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein Charles Davenport, Erasmus A. Ellis, Margaret Davenport, wife of Peter McKitterick, John Phillip Edgar Davenport. minor child of Joseph Davenport, deceased, appearing and represented by V Gourdan, his tutor, and Elizabeth Davenport, widow of Celestin Maxent, deceased, heirs of John Davenport, are plaintiffs in error, and you and als. are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable R. B. Taney, chief justice of the Supreme Court of the United States, this thirteenth day of April, in the year of our Lord one thousand eight hundred and fifty-three.

THEO. H. McCALEB, [L. S.]
U. S. Judge.

Marshal's return.

Rec'd April 13, 1853, and on the 20th April, 1853, served copy of the within citation in error on Augustin Cuesta in the following manner, to wit, by handing the same to F. Perin Esq., personally, the attorney of record of said defendant in error, who accepted service of same for the said Augustin Cuesta, he being absent at the time. Ret'd into court, April 20, 1853.

WM. S. SCOTT, *U. S. Marshal.*
By CHA. A. LABREZAN, *D'y Marshal.*

Citation in error.

The United States of America to Javeera Cuesta, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for

3695

the fifth circuit and eastern district of Louisiana, wherein Charles Davenport, Erasmus A. Ellis, Margaret Davenport, wife of Peter McKitterick, John Phillip Edgar Davenport, minor child of Joseph Davenport, deceased, appearing and represented by V. Gourdan, his tutor, and Elizabeth Davenport, widow of Celestin Maxent, deceased, heirs of John Davenport, are plaintiffs in error, and you and als. are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable R. B. Taney, chief justice of the Supreme Court of the United States this thirteenth day of April, in the year of our Lord one thousand eight hundred and fifty-three.

THEO. H. McCALEB, [L. S.]
U. S. Judge,

Marshal's return.

Rec'd April 18, 1853, and on the 20th April, 1853, served copy of the within citation in error on Javeera Cuesta in the following manner, to wit, by handing the same personally to F. Perin, esq., the attorney of record of said defendant in error, who accepted service for the said Javeera Cuesta, he being absent at the time. Ret'd into court, April 20, 1853.

WM. S. SCOTT, *U. S. Marshal.*
By CHA. A. LABREZAN, *D'y Marshal.*

Citation in error.

The United States of America to Maria Antonia Fletcher, otherwise called Maria Antonia Fletcher Hipp, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein Charles Davenport, Erasmus A. Ellis, Margaret Davenport, wife of Peter McKitterick, John Phillip Edgar Davenport, minor child of Joseph Davenport, deceased, appearing and represented by V. Gourdan, his tutor, and Elizabeth Davenport, widow of Celestin Maxent, deceased, heirs of John Davenport, are plaintiffs in error, and you and als. are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, chief justice of the Supreme

Court of the United States, this thirteenth day of April, in the year of our Lord one thousand eight hundred and fifty-three.

THEO. H. McCALEB, [L. S.]
U. S. Judge.

Marshal's return.

Rec'd April 13th, 1853, and on the 20th April, 1853, served copy of the within citation in error on Maria Antonio Fletcher in the following manner, to wit, by handing the same to F. Perin, esq., the attorney of record of defendant in error, who accepted service of same for the said Maria Antonio Fletcher, she being absent at the time.

Ret'd into court, New Orleans, April 20, 1853.

WM. S. SCOTT, *U. S. M.*
By CHA. A. LAHRZAN,
U. S. D'y Marshal.

Citation in error.

The United States of America to Felicite Fletcher, otherwise called Felicite Fletcher Hipp, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein Charles Davenport, Erasmus A. Ellis, Margaret Davenport, wife of Peter McKitterick, John Phillip Edgar Davenport, minor child of Joseph Davenport, deceased, appearing and represented by his tutor, V. Gourdan, and Elizabeth Davenport, widow of Celestin Maxent, deceased, heirs of John Davenport, are plaintiffs in error, and you and als. are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable R. B. Taney, chief justice of the Supreme Court of the United States, this thirteenth day of April, in the year of our Lord one thousand eight hundred and fifty-three.

THEO. H. McCALEB, [L. S.]
U. S. Judge.

Marshal's return.

Rec'd April 13th, 1853, and on the 20th April, 1853, served copy of the within citation in error on Felicite Fletcher, otherwise called Felicite Fletcher Hipp, in the following manner, to wit, by handing the same personally to F. Perin, esq., the attorney of record of said defendant in error, who accepted service of same for the said Felicite

3196.

Fletcher, otherwise called Felicite Fletcher Hipp, she being absent at the time.

Ret'd into court, New Orleans, April 20, 1853.

WM. S. SCOTT, *U. S. M.*
By CHA. A. LABREZAN,
D'y Marshal.

Citation in error.

The United States of America to Charles McMicken, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at the city of Washington on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the fifth circuit and eastern district of Louisiana, wherein Charles Davenport, Erasmus A. Ellis, Margaret Davenport, wife of Peter McKitterick, John Phillip Edgar Davenport, minor child of Joseph Davenport, deceased, appearing and represented by V. Gourdan, his tutor, and Elizabeth Davenport, widow of Celestin Maxent, deceased, heirs of John Davenport, are plaintiffs in error, and you and als. are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the honorable R. B. Taney, chief justice of the Supreme Court of the United States this thirteenth day of April, in the year of our Lord one thousand eight hundred and fifty-three.

THEO. H. McCALEB, [L. S.]
U. S. Judge.

Marshal's return.

Rec'd April 13, 1853; and on the 20th April, 1853, served copy of the within citation in error on Charles McMicken, in the following manner, to wit, by handing the same personally to F. Perin, Esq., the attorney of record of said defendant in error, who refused to accept service for said Charles McMicken. Mr. McMicken being absent, no other service could be made.

Ret'd into court, April 20, 1853.

WM. S. SCOTT,
U. S. Marshal.
By CHA. A. LABREZAN,
Deputy Marshal.